

AMENDMENT OF AGREEMENT BETWEEN
THE NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES AND
ACACIA NETWORK HOUSING, INC.

THIS MODIFICATION AGREEMENT ("Modification Agreement") dated this 10 day of February, 2016, between the New York City Department of Homeless Services ("Department"), located at 33 Beaver Street, New York, NY 10004, and Acacia Network Housing, Inc. ("Contractor") a not-for-profit corporation having its principal office at 300 East 175th Street, Bronx, NY 10457 (collectively "the Parties").

W I T N E S S E T H:

WHEREAS, the Department is responsible for administering temporary emergency housing and re-housing support (collectively, "Shelter") for families determined by the Department to be eligible for Shelter ("eligible homeless adults"); and

WHEREAS, the Department entered into an agreement ("Agreement") commencing as of July 1, 2015 for the Contractor to provide Shelter to eligible homeless adults and families; and

WHEREAS, pursuant to the Agreement the Contractor provides temporary emergency housing to eligible homeless adults, sometimes in privately-owned apartment buildings ("Cluster Housing"); and

WHEREAS, the City of New York is in the process of phasing out Cluster Housing for eligible homeless adults within the next three years; and

WHEREAS, the Parties now seek amend the Scope of Work (Appendix B) of the Agreement, pursuant to § 4-02(b)(1)(vii) of the New York City Procurement Policy Board Rules, in order to ensure a smooth and effective phase-out of clusters within the next three years; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto have agreed and do hereby agree as follows:

1. Except as modified herein or modified previously, all of the covenants, terms and conditions of the Agreement shall remain unchanged, and are hereby ratified and confirmed as in full force and effect.

2. **MODIFICATION OF SCOPE OF WORK**

A. The Contractor shall continue to provide Services pursuant to the Agreement, except where otherwise specified in the phase-out plan ("Plan") described in this Article 2.

B. All terms defined in the Agreement shall have the same meanings in this Modification Agreement.

C. **Phase-out Plan:** Contractor shall implement a Plan to phase out Clusters.

1. **Closing Units.**

a) The Contractor shall close two hundred ninety seven (297) Units in total as follows, and in accordance with the schedule attached hereto as **Appendix A** and incorporated herein:

- Thirty three (33) Units to be closed by March 1, 2016
- Nineteen (19) Units to be closed by April 1, 2016
- Seventeen (17) Units to be closed by June 30, 2016
- Two hundred twenty eight (228) Units to be closed by December 31, 2016

- b) Contractor shall provide a notice period, acceptable to the Department, to both the Department and to the Building residents who will be displaced.

2. Converting Partially Occupied Buildings Into Stand-Alone Contracts.

- a) In Buildings where the Contractor has some occupied Units , and plans to secure additional Units in the Building, then the Contractor shall adhere to the terms of this Subsection 2.
- b) Contractor shall convert the Building from cluster housing into a stand-alone shelter by exchanging Units in some Buildings for Units in other Buildings in its portfolio.
- c) Contractor currently has fourteen (14) buildings in this category. Through these conversions to stand-alone shelters, Contractor will increase the one hundred eighty two (182) Units it currently has to three hundred seventy seven (377) Units. The additional 195 Units shall be used to offset some of the 297 Units closed pursuant to Section 2.C.1 above.

3. Converting Current Stand-Alone Buildings from Cluster Contracts Into Shelter Contracts.

- a) In cases where the Contractor already occupies the entire Building, and the landlord has a valid Certificate of Occupancy, and the building has no violations that cannot be easily cured, then the Contractor shall adhere to the terms of this Subsection 3.
- b) These Units shall remain in cluster contracts until the Parties are able to process, through procurements, contracts to separate them into individual contracts at a later date. There are currently twenty (20) Buildings in this category, with 100% occupancy, representing two hundred ninety six (296) Units.

4. Adding Permanent Housing Through Master Leases.

- a) Contractor shall discuss and actively pursue the possibility of entering into Master Leases with the three (3) landlords that own the eighteen (18) Buildings in this category. There are currently one hundred seventy (170) Units in the 18 Buildings in this category. If Contractor is able to control the Buildings in their entirety, then the Unit count would be increased to seven hundred fifteen (715).
- b) Contractor warrants that the Certificates of Occupancy are in order for each of the 18 buildings in this category.
- c) Contractor projects that it will convert nine (9) of the Buildings in this category to a Master Lease. It projects that it will convert one hundred seven (107) of the Units by July 1, 2016; two hundred fifteen (215) Units by December 31, 2016; and three hundred ninety three (393) Units by July 1, 2017.

5. Achieving Contract Capacity.

In order to meet contract capacity under the Agreement, totaling eight hundred forty three (843) Units, Contractor must replace one hundred seventy (170) Units. Contractor shall accomplish such replacement through the addition of stand-alone Buildings. The Parties have identified Buildings that can be utilized with at least 80% occupancy, and for which the landlords have agreed to shift the remaining units to

achieve 100% occupancy by December 2017. The Contractor and DHS acknowledge that there would be no net loss of units in this contract.

D. **Enhanced Maintenance Provisions:** The Parties will adhere to the following Enhanced Maintenance provisions, for all housing contracts contemplated by this Modification Agreement, to ensure that the Department and the City of New York have the ability to enforce habitability requirements. These Enhanced Maintenance Provisions shall be added to the Agreement as Article XIII.

ARTICLE XIII — ENVIRONMENTAL STANDARDS

Section 13.01 Environmental Standards. The Contractor shall ensure that the Facility is in compliance with the environmental standards set forth in all applicable provisions of this Agreement, Department Policies, and Part 900 Regulations, including §900.5, §900.11 and §900.12 of those Regulations.

A. An appropriate unit shall be provided to each Family referred to the Facility. The Contractor shall provide minimum furnishings for each unit in accordance with § 900.12 of the Part 900 Regulations.

B. Staff shall conduct health and safety inspections of all Family units bi-weekly, except Staff shall conduct weekly inspections of the units of Families with newborns and/ or open ACS cases. Staff shall maintain documentation indicating their compliance with this subsection B of Section 13.01 of Appendix B, including findings and corrective action taken, subject to inspection by the Department.

Section 13.02 Use of Space. Space in the Facility shall be used exclusively for the purposes set forth in this Agreement.

Section 13.03 Operation and Maintenance. The Contractor shall operate and maintain the Facility in accordance with all applicable provisions of this Agreement, Department Policies, Part 900 Regulations, including § 900.12 of those Regulations, and all other applicable Laws.

A. **Hiring of Superintendent/Maintenance Staff.** The Contractor shall hire a qualified superintendent and maintenance staff for the Facility who have a satisfactory knowledge of building maintenance and meet the Department's experience requirements.

1. The Superintendent hired by the Contractor must have five (5) years of experience working at buildings of similar size to the Facility. The Department reserves the right to review the qualifications of candidates selected by the Contractor for the Superintendent position. The Contractor shall submit the resumes of at least five (5) potential Superintendent candidates to the Department for review. The Department shall notify the Contractor if the proposed candidates for Superintendent are acceptable within two (2) weeks of the submission.

2. Each individual hired by the Contractor as part of its maintenance staff must possess a general knowledge of building repair and maintenance, including, but not limited to, maintenance and repair of building systems (e.g., electric, HVAC, and fire safety) and the maintenance and repair of interior building components (e.g., carpentry, masonry, and tile repair).

3. The Contractor shall ensure that the Superintendent, along with all building maintenance staff, maintain all applicable licenses and certificates. The Contractor shall retain copies of all licenses and certificates for maintenance staff and make these records available for the Department to review.

B. **Property Management Plan.**

The Contractor shall submit a draft Property Management Plan to the Department within 30 days after registration of this Agreement. The Plan shall outline the Contractor's strategy for handling routine maintenance and emergency repairs; set forth a schedule for inspections and preventive maintenance; and describe how the Contractor shall meet its responsibilities and obligations described in this Section 13.03 of Appendix B. The Plan must describe: (i) procedures for inspecting, and maintenance of all areas of the Facility on a regular basis; how the Contractor will comply with the applicable legal standards for inspections and maintenance of the various building systems, along with any additional standards as may be issued by the Department; (ii) how the Contractor will handle client complaints made directly to Facility staff; and (iv) how the Contractor will handle client complaints made to the City's shelter resident complaint hotline. If the Facility is in a leased building, the Contractor shall describe how it will coordinate maintenance and repair obligations with the Landlord. The Plan must also describe how the Contractor will develop an auditable system for recording and tracking all inspection, maintenance and repairs performed at the Facility. Upon approval from the Department, but not later than sixty (60) days from the registration of this Agreement, the Plan shall be deemed to be in full force and effect. The Plan shall serve as the binding direction for the Contractor's maintenance of the Facility. Any changes to the Plan must conform to all requirements as set forth in this subsection B of Section 13.03 of Appendix B, including resubmission and approval of the Plan. Invoices related to the maintenance and repair of the Facility will not be processed without an approved Plan.

C. Maintenance/Repair Obligations.

1. The Contractor shall be responsible for the preventative, daily, corrective, interior, exterior, structural and emergency maintenance and repair of the Facility. The Contractor's obligations in this regard include, but are not limited to: the maintenance of all mechanical systems (including HVAC, boiler, hot water, emergency generator, elevator and fire safety) and the interior and exterior building components, including general plumbing, carpentry, electric, window screens, window glass, non-capital masonry, tile repair, door alarms, locks, grounds, equipment, and furnishings.
2. In the event the Contractor leases the Facility space, the Contractor shall be responsible for all of the above maintenance and repair obligations to the extent responsibility is so allocated under its Lease. The Contractor shall also exercise all available remedies available under the Facility Lease to ensure its Landlord complies with all Landlord repair and maintenance obligations.
3. The Contractor shall comply with and correct any deficiency ("Deficiency"), as defined in the Department's Shelter Inspection Procedure Number 15-210, as amended ("Procedure"), within the specified deadlines.
4. The Contractor shall only pay for repairs necessitated by client vandalism to the extent the vandalism was the result of the Contractor's negligent supervision of the Clients. Repairs necessitated by client vandalism and not the result of the Contractor's negligent supervision of the Clients will be completed by the Contractor in accordance with this Article XIII and funded by the Department.
5. The Contractor shall be responsible for curing all violations and deficiencies issued against the Facility. The Contractor shall immediately, notify the Department of any such violations. The Contractor shall prepare and submit corrective action plan for curing capital and non-capital violations, including time frames for curing these violations, and written notice once these violations have been cured, in accordance with all applicable Laws and the Procedure. The

corrective action plan must be submitted to the Department in a time and manner to be determined by the Department.

6. The Contractor shall consult with, and receive written approval from the Department before initiating any structural changes, including renovations and room reconfigurations, divisions or change in use.

D. Liquidated Damages

1. Liquidated damages may be discharged, at the Department's option, as deductions against any pending invoice of the Contractor, under this Agreement. All such amounts that are not so deducted will be paid forthwith to the Department by the Contractor, upon written demand. Liquidated damages are not penalties against the Contractor and are in addition to all other remedies allowed under the Agreement or otherwise by law.

2. For each day that the Contractor fails to correct a Category 1 Deficiency within the prescribed 24 hour deadline, the Department may assess liquidated damages in the amount of one hundred twenty five dollars (\$125.00) per day.

3. For each day that the Contractor fails to correct a Category 2 Deficiency within the prescribed 30 day deadline, the Department may assess liquidated damages in the amount of fifty dollars (\$50.00) per day.

4. For each day that the Contractor fails to correct a Category 3 Deficiency within the prescribed 60 day deadline, the Department may assess liquidated damages in the amount of twenty-five dollars (\$25.00) per day.

5. In no event shall the Contractor be liable for any delays which are due to the Department's failure to perform; in such case the delivery date may be adjusted to reflect a Department-precipitated delay.

6. This Section shall apply, except in the case of delays result from Acts of God, natural disaster or declaration of war.

E. Contractor Authorization for Department Repairs

1. The Contractor hereby authorizes the Department to use Department resources, including, but not limited to Department contractors, to correct any Deficiency if the Contractor does not, or is unable to, correct the Deficiency within the applicable deadline. This remedy is in addition to, and not in lieu of, any other remedies the Department may have under this Agreement or law. The Contractor agrees to not hold the Department and the City of New York liable for any consequential damages arising from any repairs performed by the Department.

2. In the event the Contractor leases the Facility, the Contractor shall include in its Lease for the facility a provision allowing the Department or Department contractors to enter the Facility to correct any Deficiency that the Contractor or its Landlord fails to repair. The Lease must also provide that the Landlord will not hold the Department or the City of New York liable for any consequential damages arising from any repairs performed by the Department.

3. The Contractor shall submit a copy of its lease for Department review and approval prior to the execution of this Agreement. The Department will not approve any lease that does not allow the Department to enter the Facility for the purposes of making repairs.

4. The Department will recoup and/or withhold all expenses incurred by the Department in correcting a Deficiency (including, but not limited to, labor and materials) from funds due or scheduled to become due to the Contractor under this Agreement.

F. Recoupment and/or Withholding.

In the event the Department recoups and/or withholds money in accordance with this Article XIII and the Procedure, the Contractor understands and expressly agrees that any recoupment and/or withholding shall come from funds allocated in the Budget for Administrative Overhead, in the event the Deficiency is the Contractor's responsibility under its lease for the Facility. In the event the Deficiency is the responsibility of the landlord under the lease, the recoupment and/or withholding shall come from funds allocated in the Budget for rent.

The Contractor is prohibited from using funds in the Budget designated for a purpose other than Administrative Overhead or rent to pay for or offset any recoupment and/or withholding by the Department pursuant to this Article XIII.

- E. **Additional Assurances:** For all phases of the Plan, Contractor shall provide the Department with assurances and sufficient supporting documentation to show that it can provide housing, either permanent or in a stand-alone shelter, to all Building residents who will be displaced.
- F. **Payments:** Except for Close-outs, as discussed above, the Department shall make no payments for Units that do not possess a Certificate of Occupancy, Letter of No Objection, or equivalent.

3. PROCUREMENT POLICY BOARD RULES

This Modification Agreement is subject to the Rules of the Procurement Policy Board of the City of New York ("PPB Rules"). In the event of a conflict between the said Rules and a provision of the Modification Agreement, the Rules shall take precedence.

4. APPROVALS

THE CITY OF NEW YORK

This Modification Agreement shall not become effective or binding unless:

- A. authorized by the Mayor; approved pursuant to the New York City Charter and Procurement Policy Board Rules for contracts not subject to public letting; and the Comptroller shall have endorsed his certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable hereto sufficient to pay the estimated expense of executing this Modification Agreement; and
- B. approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval; and
- C. certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan.

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IN WITNESS WHEREOF, the parties have duly executed this Modification Agreement on the date first above written.



CITY OF NEW YORK
DEPARTMENT OF HOMELESS SERVICES

By Wynne
Title JW



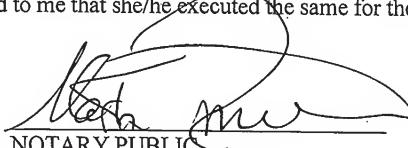
CONTRACTOR
By Thomas Mather
Title Chief Operating Officer
[Redacted]
Fed. Employer I.D. No. or Soc. Sec. No.

STATE OF NEW YORK)

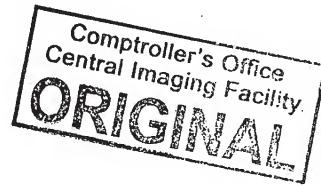
: ss:

COUNTY OF NEW YORK)

On this 10 day of January 20 16, before me personally came
Vincent Russo, to me known and known to me to be
Agency Chief Contracting Officer of the DEPARTMENT OF HOMELESS
SERVICES of the CITY OF NEW YORK, the person described in and who executed the foregoing
instrument, and she/he acknowledged to me that she/he executed the same for the purpose therein
mentioned.


NOTARY PUBLIC

MARTA ZMOIRA
Notary Public, State of New York
Qualified in New York County
No. 01ZM6211210
My Commission Expires 12/14/2017

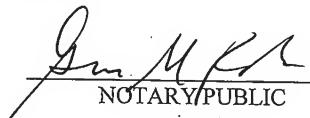


STATE OF New York

: ss:

COUNTY OF Bronx)

On this 5th day of February 20 16, before me
personally came Pamela Mattel, to me known, who,
being by me duly sworn, did depose and say that she/he resides at
13 Hill Drive, Oyster Bay, NY, that she/he is the
Chief Operating Officer of
Acacia Network Housing, Inc., the corporation
described in and which executed the above instrument; and that she/he signed her/his name thereto
by order of the board of directors of said corporation.


NOTARY PUBLIC

GIAMARA M. ROSADO
Notary Public, State of New York
Registration #02RO6305162
Qualified In Bronx County
Commission Expires June 2, 2018

